

AMENDED IN ASSEMBLY MAY 23, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 215

Introduced by Senators Leno and Hueso

February 12, 2015

An act to amend Sections 309.6, 1701.1, 1701.2, 1701.3, 1701.4, and 1701.5 of, and to add Sections 1701.6, 1701.7, and 1701.8 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 215, as amended, Leno. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified if there is an appearance of bias or prejudice based on specified criteria. The bill would prohibit commission procedures from authorizing a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(2) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations, which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints, except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. The act regulates communications in hearings before the commission and defines “ex parte communication” to mean any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons” for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. The commission’s Rules of Practice and Procedure define

a “decisionmaker” as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner’s personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.

This bill would require that the commission determine whether every proceeding, not just those requiring a hearing, is a quasi-legislative, adjudication, or ratesetting proceeding. The bill would delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define a person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding as a person with a financial interest. The bill would require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include certain individuals in the commission. The bill would require the commission to establish and maintain a communications log summarizing all oral or written ex parte communications that occur between an interested person and any decisionmaker. The bill would require the commission to post the communications log on its Internet Web site.

This bill would require that a decisionmaker, in an adjudication or ratesetting case, who makes or receives a prohibited ex parte communication, or who receives an ex parte communication that was not timely reported, to disclose certain information regarding the communication in the record of the proceeding before the commission takes a vote on the matter. If a prohibited ex parte communication is not disclosed until after the commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication would be authorized to file a petition to rescind

or modify the decision. The bill would require the commission to render decisions based upon the record in a case and would provide that an ex parte communication not be part of the record of the proceeding.

This bill would provide that ex parte communications may be permitted in quasi-legislative proceedings, but would require that they be reported within 3 working days in the communications log maintained by the commission.

This bill would require the commission to additionally prohibit communications concerning procedural issues in adjudication cases between parties or persons with an interest and decisionmakers, except for the assigned administrative law judge.

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party if copies of the communication are transmitted to all parties.

This bill would delete the requirement that if an ex parte communication meeting is granted to any party in a ratesetting proceeding, that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The bill would prohibit oral communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit an oral communication relative to procedural matters if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written ex parte communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party if copies of the communication are transmitted to all parties on the same day.

This bill would expressly make the prohibitions upon ex parte communications that relate to adjudicatory or ratesetting proceedings applicable to ex parte communications that occur at conferences, as defined. The bill would also make the requirements that pertain to ex parte communications that relate to quasi-legislative proceedings applicable to ex parte communications that occur at conferences.

This bill would authorize the commission to impose civil sanctions, including civil penalties, on any entity or person, other than a decisionmaker or employee of the commission, that violates ex parte communication requirements. The bill would authorize the Attorney General to bring an enforcement action in ~~the Superior Court of the City and County of San Francisco~~ *superior court* against a decisionmaker or employee of the commission who violates the ex parte communication requirements.

(3) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 309.6 of the Public Utilities Code is
- 2 amended to read:
- 3 309.6. (a) The commission shall adopt procedures on the
- 4 disqualification of commissioners and administrative law judges
- 5 due to bias or prejudice similar to those of other state agencies and
- 6 superior courts.
- 7 (b) (1) For ratesetting and adjudicatory proceedings, a
- 8 commissioner or administrative law judge shall be disqualified if

1 there is an appearance of bias or prejudice based on any of the
2 following:

3 (A) Actions taken during the proceeding that demonstrate bias
4 or prejudice.

5 (B) Private communications before the commencement of the
6 proceeding to influence the request for relief sought by any party
7 to the proceeding.

8 (C) Actions demonstrating any commitment to provide relief
9 to a party.

10 (2) Past work experience by the commissioner or administrative
11 law judge shall not be a sufficient basis for demonstrating an
12 appearance of bias or prejudice pursuant to paragraph (1).

13 (c) The commission procedures shall not authorize a
14 commissioner or administrative law judge to rule on a motion
15 made by a party to a proceeding to disqualify the commissioner
16 or administrative law judge due to bias or prejudice.

17 (d) The commission shall develop the procedures with the
18 opportunity for public review and comment.

19 SEC. 2. Section 1701.1 of the Public Utilities Code is amended
20 to read:

21 1701.1. (a) The commission shall determine whether each
22 proceeding is a quasi-legislative, an adjudication, or a ratesetting
23 proceeding and, consistent with due process, public policy, and
24 statutory requirements, determine whether the proceeding requires
25 a hearing. The commission's decision as to the nature of the
26 proceeding shall be subject to a request for rehearing within 10
27 days of the date of that decision or any subsequent ruling that
28 expands the scope of the proceeding. Only those parties who have
29 requested a rehearing within that time period shall subsequently
30 have standing for judicial review and that review shall only be
31 available at the conclusion of the proceeding. The commission
32 shall render its decision regarding the rehearing within 30 days.
33 The commission shall establish rules regarding ex parte
34 communication on case categorization issues.

35 (b) The commission, upon initiating an adjudication proceeding
36 or ratesetting proceeding, shall assign one or more commissioners
37 to oversee the case and an administrative law judge where
38 appropriate. The assigned commissioner shall schedule a prehearing
39 conference. The assigned commissioner shall prepare and issue
40 by order or ruling a scoping memo that describes the issues to be

1 considered and the applicable timetable for resolution. The
2 administrative law judge shall either preside and conduct, or assist
3 the assigned commissioner or commissioners in presiding and
4 conducting, any evidentiary or adjudication hearing that may be
5 required.

6 (c) The commission, upon initiating a quasi-legislative
7 proceeding, shall assign one or more commissioners to oversee
8 the case and an administrative law judge, where appropriate, who
9 may be assisted by a technical advisory staff member in conducting
10 the proceeding. The assigned commissioner shall prepare and issue
11 by order or ruling a scoping memo that describes the issues to be
12 considered and the applicable timetable for resolution.

13 (d) (1) Quasi-legislative cases, for purposes of this article, are
14 cases that establish policy, including, but not limited to,
15 rulemakings and investigations which may establish rules affecting
16 an entire industry.

17 (2) Adjudication cases, for purposes of this article, are
18 enforcement cases and complaints except those challenging the
19 reasonableness of any rates or charges as specified in Section 1702.

20 (3) Ratesetting cases, for purposes of this article, are cases in
21 which rates are established for a specific company, including, but
22 not limited to, general rate cases, performance-based ratemaking,
23 and other ratesetting mechanisms.

24 (4) “All-party conference,” for purposes of this article, is a
25 public hearing held on the record before a quorum of
26 commissioners at which parties to a proceeding shall have the right
27 to participate and communicate their views regarding any factual,
28 legal, or policy issue in the proceeding.

29 (e) (1) (A) “Ex parte communication,” for purposes of this
30 article, means any oral or written communication between a
31 decisionmaker and an interested person concerning any matter
32 before the commission that the commission has not specified in
33 its Rules of Practice and Procedure as being a procedural matter
34 and that does not occur in a public hearing, workshop, or other
35 public proceeding, or on the official record of the proceeding on
36 the matter. The commission shall specify in its Rules of Practice
37 and Procedure, enacted by rulemaking, the types of issues
38 considered procedural matters under this article. Any
39 communication between an interested person and a decisionmaker
40 regarding which commissioner or administrative law judge may

1 be assigned to a matter before the commission shall not be deemed
2 to be a procedural matter and shall be an ex parte communication
3 subject to this article.

4 (B) “Interested person,” for purposes of this article, means any
5 of the following:

6 (i) Any applicant, an agent or an employee of the applicant, or
7 a person receiving consideration for representing the applicant, or
8 a participant in the proceeding on any matter before the
9 commission.

10 (ii) Any person with a financial interest, as described in Article
11 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
12 Government Code, in a matter before the commission, or an agent
13 or employee of the person with a financial interest, or a person
14 receiving consideration for representing the person with a financial
15 interest. A person involved in issuing credit ratings or advising
16 entities or persons who may invest in the shares or operations of
17 any party to a proceeding is a person with a financial interest.

18 (iii) A representative acting on behalf of any civic,
19 environmental, neighborhood, business, labor, trade, or similar
20 organization who intends to influence the decision of a commission
21 member on a matter before the commission.

22 (iv) Other categories of individuals deemed by the commission,
23 by rule, to be an interested person.

24 (2) The commission shall by rule adopt and publish a definition
25 of decisionmakers and interested persons for purposes of this
26 article, along with any requirements for written reporting of ex
27 parte communications and appropriate sanctions for noncompliance
28 with any rule proscribing ex parte communications. The definition
29 of decisionmakers shall include, but is not limited to, each
30 commissioner; the attorney for the commission; the executive
31 director of the commission; the personal staff of a commissioner
32 if the staff is acting in a policy or legal advisory capacity; the chief
33 administrative law judge of the commission; and the administrative
34 law judge assigned to the proceeding.

35 (3) For adjudication and ratesetting cases, the rules shall provide
36 that ex parte communications shall be prohibited, as required by
37 this article. The rules shall provide that if an ex parte
38 communication occurs that is prohibited by this article, whether
39 initiated by a decisionmaker or an interested person, all of the
40 following shall be required:

1 (A) The interested person shall report the communication within
2 one working day of the communication by filing a notice with the
3 commission that includes all the following:

4 (i) The date, time, and location of the communication, whether
5 the communication was oral, or written, or a combination of both,
6 and the communication medium utilized.

7 (ii) The identity of the decisionmaker, the identity of the person
8 initiating the communication, and any other persons present.

9 (iii) A complete and comprehensive description of the interested
10 person's and the decisionmaker's communication and its content.

11 (iv) A copy of any written material or text used during the
12 communication.

13 (B) Any decisionmaker who participated in the communication
14 shall comply with both of the following:

15 (i) If the interested person who participated in the
16 communication has not timely submitted the notice required by
17 subparagraph (A), the decisionmaker shall promptly prepare and
18 file a notice that includes the information required by subparagraph
19 (A).

20 (ii) If the interested person has timely submitted the notice
21 required by subparagraph (A), the decisionmaker shall either
22 promptly file a notice affirming the factual representations made
23 by the interested person in the notice or promptly file a notice
24 correcting or supplementing the factual representations made by
25 the interested person.

26 (4) The commission shall not take any vote on a matter where
27 a notice has been filed pursuant to subparagraph (A) or (B) of
28 paragraph (3) until all parties to the proceeding have been provided
29 a reasonable opportunity to respond to the communication.

30 (5) If a prohibited ex parte communication is not disclosed as
31 required by this subdivision until after the commission has issued
32 a decision on the matter to which the prohibited communication
33 pertained, a party not participating in the communication may file
34 a petition to rescind or modify the decision. The party may seek
35 a finding that the ex parte communication was prohibited and
36 significantly influenced the decision's process or outcome as part
37 of any petition to rescind or modify the decision. The commission
38 shall process the petition in accordance with the commission's
39 procedures for petitions for modification and shall issue a decision
40 on the petition no later than 180 days after the filing of the petition.

1 (6) (A) Ex parte communications that occur at conferences that
2 are related to an adjudication or ratesetting proceeding shall be
3 prohibited consistent with the ex parte communications
4 requirements of this article.

5 (B) Ex parte communications that occur at conferences and that
6 are related to a quasi-legislative proceeding shall be governed by
7 the ex parte communication disclosure requirements developed
8 by the commission.

9 (C) For purposes of this section, “ex parte communications that
10 occur at conferences” includes, but is not limited to,
11 communications in a private setting or during meals, entertainment
12 events, and tours, and informal discussions among conference
13 attendees.

14 (7) The commission shall render its decisions based on the
15 evidence in the record. Ex parte communications shall not be a
16 part of the record of the proceedings.

17 (f) The commission may meet in a closed session to discuss
18 administrative matters so long as no collective consensus is reached
19 or vote taken on any matter requiring a vote of the commissioners.
20 The commission shall, by rule, adopt and publish a definition of
21 “administrative matters” for purposes of this section.

22 (g) The commission shall permit ~~oral and~~ written comments
23 received from the public at ~~noticed public participation hearings~~
24 ~~convened by the commission~~ to be included in the record of its
25 proceedings. The commission shall provide parties to the
26 proceeding a reasonable opportunity to respond to any public
27 comments included in the record of proceedings.

28 SEC. 3. Section 1701.2 of the Public Utilities Code is amended
29 to read:

30 1701.2. (a) If the commission pursuant to Section 1701.1 has
31 determined that an adjudication case requires a hearing, assigned
32 commissioner or the assigned administrative law judge shall hear
33 the case in the manner described in the scoping memo. The scoping
34 memo shall designate whether the assigned commissioner or the
35 assigned administrative law judge shall preside in the case.

36 (b) The commission shall provide by rule for peremptory
37 challenges and challenges for cause of the administrative law judge.
38 Challenges for cause shall include, but not be limited to, financial
39 interests and prejudice. The rule shall provide that all parties are
40 entitled to one peremptory challenge of the assignment of the

1 administrative law judge in all cases. All parties are entitled to
2 unlimited peremptory challenges in any case in which the
3 administrative law judge has within the previous 12 months served
4 in any capacity in an advocacy position at the commission, been
5 employed by a regulated public utility, or has represented a party
6 or has been an interested person in the case.

7 (c) The assigned commissioner or the administrative law judge
8 shall prepare and file a decision setting forth recommendations,
9 findings, and conclusions. The decision shall be filed with the
10 commission and served upon all parties to the action or proceeding
11 without undue delay, not later than 60 days after the matter has
12 been submitted for decision. The decision of the assigned
13 commissioner or the administrative law judge shall become the
14 decision of the commission if no further action is taken within 30
15 days. Any party may appeal the decision to the commission,
16 provided that the appeal is made within 30 days of the issuance of
17 the decision. The commission may itself initiate a review of the
18 proposed decision on any grounds.

19 (d) The commission may hold an all-party conference before a
20 quorum of commissioners at which all parties have an opportunity
21 to be heard. The commission shall adopt rules for implementation
22 of all-party conferences that ensure the broadest participation by
23 parties to the proceeding that the commission can reasonably
24 accommodate consistent with the commissioners' other duties and
25 responsibilities.

26 (e) The commission's decision shall be supported by findings
27 of fact on all issues material to the decision, and the findings of
28 fact shall be based on the record developed by the assigned
29 commissioner or the administrative law judge. A decision different
30 from that of the assigned commissioner or the administrative law
31 judge shall be accompanied by a written explanation of each of
32 the changes made to the decision.

33 (f) Notwithstanding Section 307, an officer, employee, or agent
34 of the commission that is personally involved in the prosecution
35 or in the supervision of the prosecution of an adjudication case
36 before the commission shall not participate in the decision of the
37 case, or in the decision of any factually related adjudicatory
38 proceeding, including participation in or advising the commission
39 as to findings of fact, conclusions of law, or orders. An officer,
40 employee, or agent of the commission that is personally involved

1 in the prosecution or in the supervision of the prosecution of an
2 adjudication case may participate in reaching a settlement of the
3 case, but shall not participate in the decision of the commission to
4 accept or reject the settlement, except as a witness or counsel in
5 an open hearing or a hearing closed pursuant to subdivision (h).
6 The Legislature finds that the commission performs both
7 prosecutorial and adjudicatory functions in an adjudication case
8 and declares its intent that an officer, employee, or agent of the
9 commission, including its attorneys, may perform only one of
10 those functions in any adjudication case or factually related
11 adjudicatory proceeding.

12 (g) (1) Ex parte communications shall be prohibited in
13 adjudication cases.

14 (2) Any oral or written communications concerning procedural
15 matters in adjudication cases between interested persons and
16 decisionmakers, except the assigned administrative law judge,
17 shall be prohibited.

18 (h) Notwithstanding any other law, the commission may meet
19 in a closed hearing to consider the decision that is being appealed.
20 The vote on the appeal shall be in a public meeting and shall be
21 accompanied with an explanation of the appeal decision.

22 (i) Adjudication cases shall be resolved within 12 months of
23 initiation unless the commission makes findings why that deadline
24 cannot be met and issues an order extending that deadline. In the
25 event that a rehearing of an adjudication case is granted, the parties
26 shall have an opportunity for final oral argument.

27 (j) (1) The commission may determine that the respondent
28 lacks, or may lack, the ability to pay potential penalties or fines
29 or to pay restitution that may be ordered by the commission.

30 (2) If the commission determines that a respondent lacks, or
31 may lack, the ability to pay, the commission may order the
32 respondent to demonstrate, to the satisfaction of the commission,
33 sufficient ability to pay potential penalties, fines, or restitution that
34 may be ordered by the commission. The respondent shall
35 demonstrate the ability to pay, or make other financial
36 arrangements satisfactory to the commission, within seven days
37 of the commission commencing an adjudication case. The
38 commission may delegate to the attorney to the commission the
39 determination of whether a sufficient showing has been made by
40 the respondent of an ability to pay.

1 (3) Within seven days of the commission's determination of the
2 respondent's ability to pay potential penalties, fines, or restitution,
3 the respondent shall be entitled to an impartial review by an
4 administrative law judge of the sufficiency of the showing made
5 by the respondent of the respondent's ability to pay. The review
6 by an administrative law judge of the ability of the respondent to
7 pay shall become part of the record of the adjudication and is
8 subject to the commission's consideration in its order resolving
9 the adjudication case. The administrative law judge may enter
10 temporary orders modifying any financial requirement made of
11 the respondent pending the review by the administrative law judge.

12 (4) A respondent that is a public utility regulated under a rate
13 of return or rate of margin regulatory structure or that has gross
14 annual revenues of more than one hundred million dollars
15 (\$100,000,000) generated within California is presumed to be able
16 to pay potential penalties or fines or to pay restitution that may be
17 ordered by the commission, and, therefore, paragraphs (1) to (3),
18 inclusive, do not apply to that respondent.

19 SEC. 4. Section 1701.3 of the Public Utilities Code is amended
20 to read:

21 1701.3. (a) If the commission pursuant to Section 1701.1 has
22 determined that a ratesetting case requires a hearing, the procedures
23 prescribed by subdivisions (b), (d), (f), and (i) shall be applicable.

24 (b) The assigned commissioner shall determine prior to the first
25 hearing whether the commissioner or the assigned administrative
26 law judge shall be designated as the principal hearing officer. The
27 principal hearing officer shall be present for more than one-half
28 of the hearing days. The decision of the principal hearing officer
29 shall be the proposed decision.

30 (c) An alternate decision may be issued by the assigned
31 commissioner or the assigned administrative law judge who is not
32 the principal hearing officer. Any alternate decision may be filed
33 with the commission and served upon all parties to the proceeding
34 any time prior to issuance of a final decision by the commission,
35 consistent with the requirements of Section 311.

36 (d) The commission shall establish a procedure for any party
37 to request the presence of a commissioner at a hearing. The
38 assigned commissioner shall be present at any closing arguments
39 in the case.

1 (e) The principal hearing officer shall present the proposed
2 decision to the full commission in a public meeting. The alternate
3 decision, if any, shall also be presented to the full commission at
4 that public meeting.

5 (f) The presentation to the full commission shall contain a record
6 of the number of days of the hearing, the number of days that each
7 commissioner was present, and whether the decision was completed
8 on time.

9 (g) The commission shall provide by rule for peremptory
10 challenges and challenges for cause of the administrative law judge.
11 Challenges for cause shall include, but not be limited to, financial
12 interests and prejudice. All parties shall be entitled to unlimited
13 peremptory challenges in any case in which the administrative law
14 judge has within the previous 12 months served in any capacity
15 in an advocacy position at the commission, been employed by a
16 regulated public utility, or has represented a party or has been an
17 interested person in the case.

18 (h) (1) Ex parte communications are prohibited in ratesetting
19 cases.

20 (A) Oral communications may be permitted by a decisionmaker
21 if all parties are invited to the meeting and given not less than three
22 working days' notice.

23 (B) Written ex parte communications by any interested person
24 may be permitted if copies of the communication are transmitted
25 to all parties on the same day as the original communication.
26 Written ex parte communications shall not be part of the record
27 of the proceeding.

28 (C) The commission may establish a period during which no
29 oral or written all-party communications may be permitted and
30 the commission may meet in closed session during that period,
31 which shall not in any circumstance exceed 14 days. If the
32 commission holds the decision, it may permit all-party
33 communications during the first half of the interval between the
34 hold date and the date that the decision is calendared for final
35 decision. The commission may meet in closed session for the
36 second half of that interval.

37 (2) Oral communications concerning a procedural matter in
38 ratesetting cases between interested persons and decisionmakers,
39 except the assigned administrative law judge, are prohibited, except
40 that an oral communication may be permitted at any time by any

1 decisionmaker if all parties are invited and given not less than
2 three working days' notice.

3 (3) Written communications concerning a procedural matter in
4 ratesetting cases between interested persons and decisionmakers,
5 except the assigned administrative law judge, are prohibited, except
6 that a decisionmaker may permit a written communication by any
7 party if copies of the communication are transmitted to all parties
8 on the same day.

9 (i) Any party has the right to present a final oral argument of
10 its case before the commission. Those requests shall be scheduled
11 in a timely manner. A quorum of the commission shall be present
12 for the final oral arguments.

13 (j) After the issuance of a proposed decision in a ratesetting
14 case, the commission may hold an all-party conference before a
15 quorum of commissioners at which all parties have an opportunity
16 to be heard. The commission shall adopt rules for implementation
17 of all-party conferences that ensure the broadest participation by
18 parties to the proceeding that the commission can reasonably
19 accommodate consistent with the commissioners' other duties and
20 responsibilities.

21 (k) The commission may, in issuing its decision, adopt, modify,
22 or set aside the proposed decision or any part of the decision based
23 on evidence in the record. The final decision of the commission
24 shall be issued not later than 60 days after the issuance of the
25 proposed decision. Under extraordinary circumstances the
26 commission may extend this date for a reasonable period. The
27 60-day period shall be extended for 30 days if any alternate
28 decision is proposed pursuant to Section 311.

29 SEC. 5. Section 1701.4 of the Public Utilities Code is amended
30 to read:

31 1701.4. (a) If the commission pursuant to Section 1701.1 has
32 determined that a quasi-legislative case requires a hearing, the
33 procedures prescribed by subdivisions (b) and (d) to (f), inclusive,
34 shall be applicable.

35 (b) The assigned administrative law judge and any assigned
36 technical advisory staff shall act as an assistant to the assigned
37 commissioner in quasi-legislative cases. The assigned
38 commissioner shall prepare the proposed rule or order with the
39 assistance of the administrative law judge and any assigned
40 technical advisory staff. The assigned commissioner shall present

1 the proposed rule or order to the full commission in a public
2 meeting. The report shall include the number of days of hearing
3 and the number of days that the commissioner was present.

4 (c) Ex parte communications may be permitted. Any ex parte
5 communication shall be reported in compliance with Section
6 1701.6. No reporting shall be required for written ex parte
7 communications that are transmitted to all parties on the same day
8 as the original communication.

9 (d) Any party has the right to present a final oral argument of
10 its case before the commission. Those requests shall be scheduled
11 in a timely manner. A quorum of the commission shall be present
12 for the final oral arguments.

13 (e) After the issuance of a proposed decision in a
14 quasi-legislative case, the commission may hold an all-party
15 conference before a quorum of commissioners at which all parties
16 have an opportunity to be heard. The commission shall adopt rules
17 for implementation of all-party conferences that ensure the broadest
18 participation by parties to the proceeding that the commission can
19 reasonably accommodate consistent with the commissioners' other
20 duties and responsibilities.

21 (f) The commission may, in issuing its rule or order, adopt,
22 modify, or set aside the proposed decision or any part of the rule
23 or order. The final rule or order of the commission shall be issued
24 not later than 60 days after the issuance of the proposed rule or
25 order. Under extraordinary circumstances the commission may
26 extend this date for a reasonable period. The 60-day period shall
27 be extended for 30 days if any alternate rule or order is proposed
28 pursuant to Section 311.

29 SEC. 6. Section 1701.5 of the Public Utilities Code is amended
30 to read:

31 1701.5. (a) Except as specified in subdivision (b), in a
32 ratesetting or quasi-legislative case, the commission shall resolve
33 the issues raised in the scoping memo within 18 months of the date
34 the proceeding is initiated, unless the commission makes a written
35 determination that the deadline cannot be met, including findings
36 as to the reason, and issues an order extending the deadline.

37 (b) Notwithstanding subdivision (a), the commission may
38 specify in a scoping memo a resolution date later than 18 months
39 from the date the proceeding is initiated, if that scoping memo

1 includes specific reasons for the necessity of a later date and the
2 commissioner assigned to the case approves the date.

3 SEC. 7. Section 1701.6 is added to the Public Utilities Code,
4 to read:

5 1701.6. (a) The commission shall establish and maintain a
6 communications log summarizing all oral and written ex parte
7 communications, as defined in Section 1701.1.

8 (b) The communications log shall include a summary of all oral
9 and written communications that meet the definition of an ex parte
10 communication that occur between an interested person and any
11 decisionmaker.

12 (c) Each record of a communication in the communication log
13 shall include the date of each communication, the persons involved
14 in the communication, and, to the extent known, any proceedings
15 that were the subject of each communication. Ex parte
16 communications in the summary log shall be reported no later than
17 three working days after the communication.

18 (d) The communication log shall be made available to the public
19 on the commission's Internet Web site not later than July 1, 2017.

20 SEC. 8. Section 1701.7 is added to the Public Utilities Code,
21 to read:

22 1701.7. (a) In addition to any penalty, fine, or other punishment
23 applicable pursuant to Article 11 (commencing with Section 2100),
24 the commission may assess civil sanctions upon any entity or
25 person, other than a decisionmaker or employee of the commission,
26 who violates, fails to comply with, or procures, aids, or abets any
27 violation of, the ex parte communication requirements of this
28 article or those adopted by the commission pursuant to this article.
29 The civil sanctions may include civil penalties, adverse
30 consequences in commission proceedings, or other appropriate
31 commission orders directed at the entity, person, or both the entity
32 and person, committing the violation.

33 (b) (1) Except as provided in paragraph (2), a civil penalty
34 assessed shall not exceed fifty thousand dollars (\$50,000) per
35 violation. Each day of a continuing violation is a separate violation.
36 If the violation consists of engaging in a communication that is
37 prohibited by the ex parte communication requirements, each day
38 that the violation is not disclosed to the commission and to parties
39 of record in the formal proceeding in which the communication
40 occurred shall constitute a separate violation.

(2) If the entity or person may obtain, by violating the ex parte communication requirements, financial benefits that exceed the maximum amount of civil penalty allowable pursuant to paragraph (1), the commission may impose a civil penalty up to the amount of those financial benefits.

(c) Civil penalties assessed pursuant to subdivision (b) upon entities whose rates are determined by the commission shall be in the form of credits to the customers of that entity. Civil penalties collected from other entities shall be deposited in the General Fund.

(d) In determining the appropriate civil sanctions, the commission shall consider the following factors:

(1) The severity of the violation.

(2) The conduct of the entity or person, including the level of experience of the entity or person in participating in commission proceedings and whether the entity or person knowingly violated the ex parte communication requirements.

(3) The financial resources of the entity or person.

(4) The totality of the circumstances in furtherance of the public interest.

SEC. 9. Section 1701.8 is added to the Public Utilities Code, to read:

1701.8. (a) The Attorney General may bring an enforcement action in the Superior Court for the City and County of San Francisco *superior court* against a decisionmaker or employee of the commission who violates, fails to comply with, or procures, aids, or abets any violation of, the ex parte communication requirements in this article or those adopted by the commission pursuant to this article. ~~The court shall expedite its review of the action to provide effective and timely relief.~~

(b) Notwithstanding Section 1759, in an enforcement action brought pursuant to this section, the court may grant appropriate relief, including disqualification of the decisionmaker from one or more proceedings and civil penalties as provided in Section 2111.

(c) In determining the appropriate relief, the court may consider the following factors:

(1) The severity of the violation.

(2) The conduct of the decisionmaker or employee, including whether the decisionmaker or employee knowingly violated the ex parte communication requirements.

1 (3) The financial resources of the decisionmaker or employee.
2 (4) The totality of the circumstances in furtherance of the public
3 interest.

4 (d) The Attorney General may compromise the enforcement
5 action subject to approval by the court.

6 (e) Civil penalties collected pursuant to this section shall be
7 deposited into the Litigation Deposits Fund established pursuant
8 to Article 9 (commencing with Section 16425) of Chapter 2 of
9 Part 2 of Division 4 of Title 2 of the Government Code.

10 SEC. 10. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.